

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

October 13, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Hawaii

Forfeiture of General Lease No. S-5848, David S. DeLuz, Sr., Trustee of the David S. DeLuz Trust, Lessee, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/2-2-37:63.

PURPOSE:

Forfeiture of General Lease No. S-5848, David S. DeLuz, Sr. Trustee of the David S. DeLuz, Sr. Trust, Lessee.

LEGAL REFERENCE:

Section 171-39, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waiakea House Lots, Lots 15 and 16, Block 39 situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: 3rd/2-2-37:63, as shown on the attached map labeled Exhibit A.

AREA:

.89 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

General industrial purposes.

TERM OF LEASE:

20 years, commencing on 01/01/2006 and expiring on 12/31/2026.

ANNUAL RENTAL:

\$72,000.00 due in semi-annual payments.

REMARKS:

Pursuant to the authority granted the Chairperson by the Board of Land and Natural Resources at its meeting of January 11, 1980 and the breach provision contained in General Lease S-5848, David S. DeLuz, Sr., Trustee, Lessee, was served a Notice of Default by certified mail dated 06/26/06 for:

- ☐ Failure to keep lease rental payments current
- ☒ **Failure to post required performance bond**
- ☐ Failure to post required fire insurance policy
- ☐ Failure to post required liability insurance policy

Said notice, accepted by the Lessee on 06/29/06, offered the Lessee a sixty-day cure period to correct the default. This cure period expired on 08/28/06. As of 09/22/06, this breach has not been cured.

As of 09/22/06, the current status of all lease compliance items is as follows:

RENT: The Lessee is current with all rent obligations.

INSURANCE: The Lessee has posted the required liability and fire insurance policy.

PERFORMANCE BOND:

The Lessee **has not** posted the required performance bond.

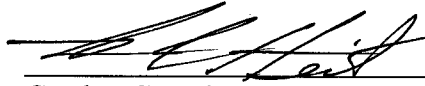
This is the Lessee's first notice of default. Staff had repeatedly asked for and reminded the Lessee that the Performance Bond is a requirement of the lease and that it is imperative that every effort be made to secure one as soon as possible.

The Lessee has several other leases with DLNR under his corporation and has performance bonds in place with them. The Lessee is claiming that the bond carrier will not issue a bond for this particular lease as they feel they are over committed with his company. It was suggested by staff that other means of securing a bond are available and it is recommended that they provide one as soon as possible.

RECOMMENDATION: That the Board:

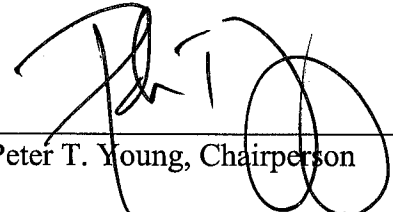
1. Authorize the cancellation of General Lease No. S-5848 in the manner specified by law;
2. Authorize the retention of all sums heretofore paid or pledged under General Lease No. S-5848 to be applied to any past due amounts;
3. Terminate the lease and all rights of Lessee and all obligations of the Lessor effective as of October 13, 2006, provided that any and all obligations of the Lessee which have accrued up to said effective date or which are stated in the lease to survive termination shall endure past such termination date until duly fulfilled, and further provided that Lessor reserves all other rights and claims allowed by law; and
4. Authorize the Department of the Attorney General, the Department of Land and Natural Resources, or their agents to collect all monies due the State of Hawaii under General Lease No. S-5848 and to pursue all other rights and remedies as appropriate.

Respectfully Submitted,



Gordon C. Heit
Land Agent

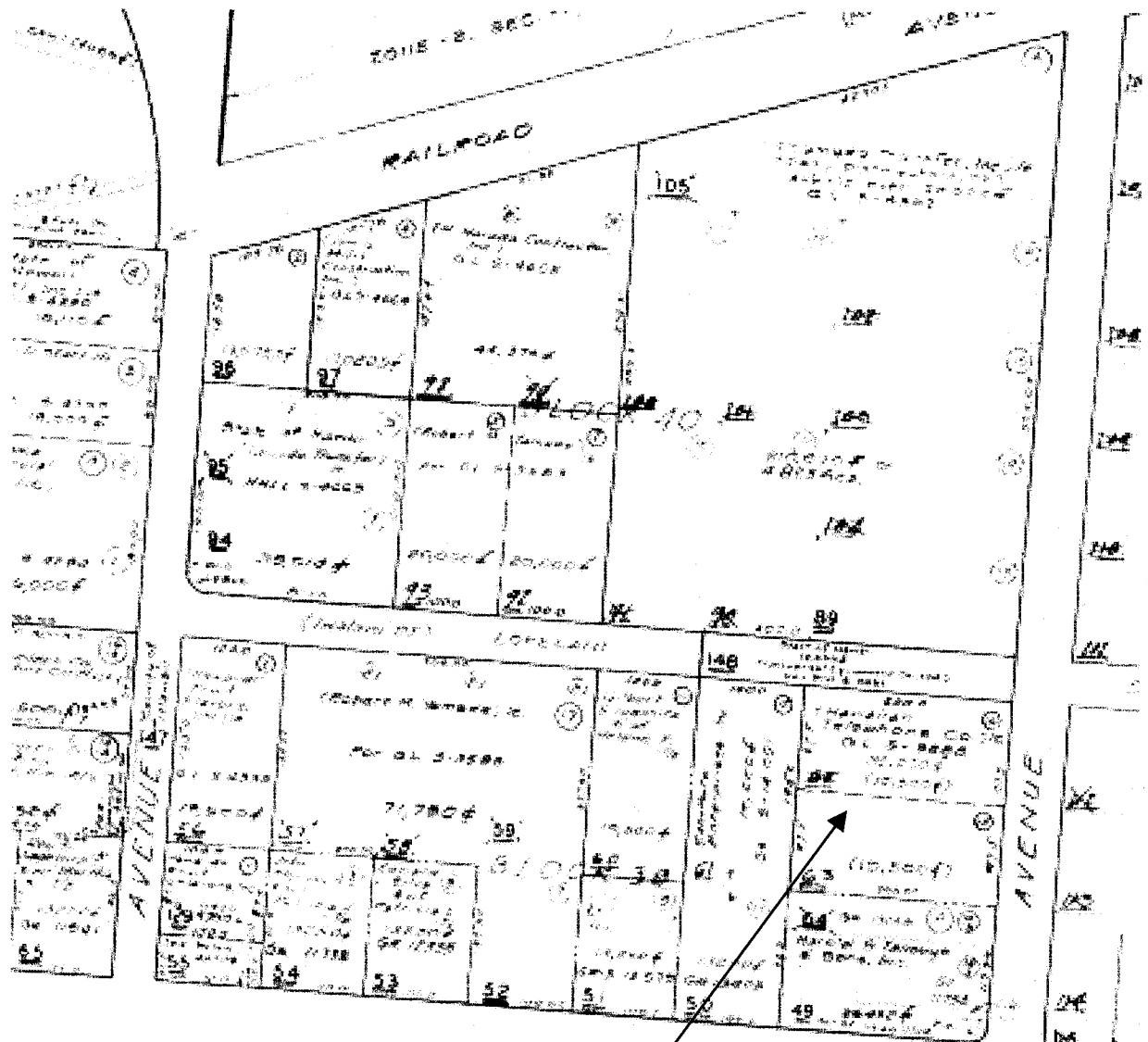
APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

EXHIBIT A1

TMK: 3rd/2-2-37:63



SUBJECT PROPERTY